IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP NO.7611 OF 2007
DATE OF DECISION: 18-05-2007

Guru Nanak Senior Secondary School, Jawahar Colony, N.I.T. Faridabad through its Secretary Sukhdev Singh.

.....PETITIONER

VERSUS

1. State of Haryana through the Financial Commissioner and Principal Secretary to Government Haryana, Education Department, Civil Secretariat, Chandigarh.
2. Director of School Education, Haryana, 30 Bays Building, Sector 17, Chandigarh.
3. District Education Officer, Faridabad, District Faridabad, Haryana.
4. Smt. Sudershan Kumari wife of Shri Vijay Krishan, resident of House No.377, Sector 22, HBC, Faridabad (Haryana).

.....RESPONDENTS

CORAM:- **HON'BLE MR.JUSTICE ASHUTOSH MOHUNTA**
HON'BLE MR.JUSTICE R S MADAN

PRESENT: Mr.Narender Hooda, Advocate
for the petitioner.

R S MADAN, J.

The petitioner is a registered Society, who run the Guru Nanak Senior Secondary School, Faridabad, which is a Government Aided School and is recognized by the Haryana School Education Board, Bhiwani. The Secretary of the Managing Committee of the school has been authorized to file the present writ petition before this Court by invoking the extra ordinary writ jurisdiction of this Court under Articles 226/227 of the Constitution of India.

The petitioner in this writ petition has sought the indulgence of this Court to issue a writ in the nature of Certiorari for quashing the impugned order dated 14-11-2007 (Annexure P-14) passed by the Director of School Education Haryana vide which the petitioner has been directed to decide the case of respondent No.4 as Principal or Headmistress by adopting the procedure prescribed under Rule 185 of Haryana School Education Rules 2003 and also to decide the suspension of the respondent from the post of S.S. Mistress under Rule 51(4) of Haryana School Education Rules, 2003 which is illegal, arbitrary, against the rules and without jurisdiction.

In brief the facts of the case are that Smt. Sudarshan Kumari-respondent No.4 initially joined the school as SS Mistress on 1-10-1982 against an unsanctioned post. Later on respondent No.4 was regularized against an Aided sanctioned post on 1-12-1986. She was temporarily given the charge of Principal for the administrative convenience of the school w.e.f. 1-12-1995. While working on the post of Principal, respondent No.4 started behaving in an irresponsible manner and her conduct became unbecoming of the Principal of the school. The Management of the school received several complaints from private persons and fellow colleagues about the conduct of respondent No.4. Resultantly, the Management withdrew the charge of Principal from respondent No.4 vide order dated 20-12-2005 and she was asked to perform the duties of SS Mistress vide Annexure P3.

It is further the case of the petitioner that respondent No.4 is a lady of quarrelsome nature, who used abusive language against the members of the staff and the Management and thereby created difficulty for

the Management to run the school. The Management was constrained to suspend her vide order dated 10-3-2006 vide Annexure P4. Respondent No.4 was served with a detailed charge-sheet on 5-4-2006 by the Managing Committee and she was asked to submit her explanation in writing within 15 days on the date of receipt of the charge-sheet. Respondent No.4 filed her reply to the said charges, which is attached as Annexure P5. After considering the reply, the Management found the same to be not satisfactory. Meanwhile, respondent No.4 filed a representation/appeal before the District Education Officer, Faridabad against the suspension order dated 10-3-2006 and also filed Civil Writ Petition No.6824 of 2006 before this Court with a prayer to direct the District Education Officer to decide her representation/appeal pending before him for taking decision by passing speaking order. The said writ petition was disposed of by the Division Bench of this Court vide order dated 4-5-2006.

In pursuance to the directions issued by the Court, the District Education Officer, Faridabad passed the order dated 29-6-2006 vide which the removal of respondent No.4 was not interfered but her suspension from the post of SS Mistress was held to be not maintainable as the proper procedure laid down under the Rule was not followed.

Aggrieved by this order, respondent No.4 filed an appeal before the Director General of School Education Haryana, Chandigarh against the order dated 3-7-2006 passed by the District Education Officer, Faribadad.

During the intervening period when the appeal of respondent No.4 was pending before the Director General of School

Education Haryana, Chandigarh, the Management-petitioner of the school appointed Mr. Vikas Thukral as an enquiry officer, who conducted the enquiry into the charges levelled against respondent No.4 and found her guilty of the charges.

On receipt of the enquiry report, respondent No.4 was issued show cause notice as to why her services be not terminated. On receipt of the reply to the show cause notice, the Management took the decision of dismissing her from service.

It is on 11-4-2007 vide Annexure P14, the Director General of School Education Haryana, Chandigarh before whom the appeal of respondent No.4 was pending, decided the appeal of respondent No.4 by observing as under:

> *"After going through the relevant records of the case and after hearing both the parties, I find that the action of the management for removal of Smt. Sudarshan Kumari from the post of Principal is not proper as management had not followed the procedure laid down under Rule 185 of Haryana School Education Rules, 2003. I have also observed that Smt. Sudarshan Kumari has also been removed from the post of SS Mistress without obtaining prior approval of the Director School Education, Haryana which was required to be obtained under Section 8(2) of Education Act of 1995 and Rule 51(4) of the Haryana School Education Rules, 2003. Accordingly, I find that the management should have decided the case of Smt. Sudarshan Kumari as Principal or Headmistress by adopting the procedure prescribed under Rule 185 of Haryana School Education Rules, 2003. So far as suspension of Smt. Sudarshan Kumari from the post of SS Mistress is concerned, it is also*

> *against the provisions of Haryana School Education Rules, 2003 for which action is required to be taken under Rule 51(4) of Haryana School Education Rules, 2003. Therefore, I direct the school management to decide the case of Smt. Sudarshan Kumari on both the issues keeping in view the above observations and submit a compliance report to the undersigned within four weeks from the service of this order failing which necessary penal action will be initiated against the management under Rule 43(1) of Haryana School Education Rules, 2003."*

On behalf of the petitioner, it is contended by the learned counsel for the petitioner that the appeal of respondent No.4 was pending against the order of her suspension from the post of SS Mistress and the order of dismissal is bad in the eyes of law because of non-following the procedure laid down under Rule 185 of Haryana School Education Rules 2003.

According to the learned counsel, there was no appeal before the Director General of School Education Haryana, Chandigarh with respect to the removal of respondent No.4 from the post of SS Mistress, therefore, he could not take the cognizance of issue.

After hearing the learned counsel for the petitioner as well as going through the record of the case, we are of the view that the Management was bent upon terminating the services of respondent No.4 on one pretext or the other. The Management should not have acted in haste when the matter was pending before respondent No.2 in an appeal but the Management acted in haste and took all precautions to take rid of the services of respondent No.4. Nowhere restricts the power of the

Management to take a decision but has directed the Management-petitioner to follow the procedure as laid down under the Rule 185 of Haryana School Education Rules, 2003 and for the purpose of her removal, the Management was to seek prior approval of the Director School Education, Haryana under Section 8(2) of Education Act, 1995 and Rule 51(4) of the Haryana School Education Rules, 2003. Resultantly, the order of suspension and removal of respondent No.4 from the post of Principal was held to be bad as is evident from Annexure P-14.

We thus do not find any infirmity in the order passed by respondent No.2 in an appeal filed by respondent No.4. However, it will be open to the Management to decide the case of respondent No.4 afresh by following the procedure as detailed in the impugned order dated 1-4-2007 (Annexure P-14).

We are, therefore, of the view that the Court would refrain itself from making any observation at this stage about the enquiry conducted by the Management of the School against respondent No.4 because it has been directed by respondent No.2 to decide the case of respondent No.4 afresh by following the procedure as laid down under Rule 185 of Haryana School Education Rules, 2003.

This petition is, accordingly, disposed of on the terms indicated above.

(R S MADAN)
JUDGE

(ASHUTOSH MOHUNTA)
JUDGE

May 18, 2007
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